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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PETER BOSCH, SAPE J. MULLENDER, and
PETER SCHEFCZIK¹

Appeal 2016-003239
Application 13/793,174
Technology Center 2400

Before JUSTIN BUSCH, JOHN P. PINKERTON, and
JAMES W. DEJMEK, *Administrative Patent Judges*.

DEJMEK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 7–11. Claims 1–6 have been withdrawn from consideration. Final Act. 2. We have jurisdiction over the remaining pending claims under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify Alcatel Lucent as the real party in interest. App. Br. 2.

STATEMENT OF THE CASE

Introduction

Appellants' claimed invention is directed to implementing macro-mobility in an IP network using a set of extensions to the IP protocol different from the Mobile IP (MIP) network-layer protocols. Abstract, Spec. ¶ 45. Macro-mobility refers to the ability to maintain transport-layer and application-layer sessions (i.e., conversations) even if there are changes in lower-level (i.e., network-layer) sessions between nodes, for example, if one node moves from one network to another. Spec. ¶ 5. Appellants acknowledge that various protocol extensions allow for macro-mobility (e.g., Mobile IP and Host Identity Protocol), but that these approaches include certain disadvantages sought to be remedied by Appellants' approach. Spec. ¶¶ 27–34 and 39–42. In the disclosed approach, which Appellants refer to as Not Mobile IP (NMIP), “[a] NMIP session allows one or both nodes to change IP addresses without interrupting any conversation (i.e., transport-layer and application-layer sessions) established by the nodes.” Spec. ¶ 53. As part of establishing a session between the nodes, a nonce (i.e., a random number) is chosen by the node to function as a unique identifier for the node. Spec. ¶ 56.

Claim 7 is representative of the subject matter on appeal and is reproduced below with the disputed limitations emphasized in *italics*:

7. A first endpoint node for a packet-switched network having a protocol stack comprising an upper layer and a lower layer, the first endpoint node comprising:

a transceiver adapted to receive incoming packets and transmit outgoing packets; and

a processor adapted to process the incoming packets and generate the outgoing packets, wherein:

the first endpoint node is adapted to establish an upper-layer session with a second endpoint node in which packets are transmitted between the first endpoint node and the second endpoint node via the packet-switched network during which the first endpoint node has a first lower-layer address;

the first endpoint node is adapted to switch from the first lower-layer address to a second lower-layer address, different from the first lower-layer address, while maintaining the upper-layer session;

the first endpoint node has a first endpoint node's identifier that is adapted for the second endpoint node to use to identify the upper-layer session both (i) when the first endpoint node has the first lower-layer address and (ii) when the first endpoint node has the second lower-layer address; and

the first endpoint node's identifier is a nonce selected by the first endpoint node.

The Examiner's Rejections

1. Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fikouras et al. (US 2010/0217876 A1; Aug. 26, 2010) (“Fikouras”); Turanyi et al. (US 2003/0228868 A1; Dec. 11, 2003) (“Turanyi”); and Solis et al. (US 7,877,503 B2; Jan. 25, 2011) (“Solis”). Final Act. 3–6.

2. Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Fikouras, Turanyi, Solis, and Wood et al. (US 6,609,198 B1; Aug. 19, 2003) (“Wood”). Final Act. 6–7.

3. Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Fikouras, Turanyi, Solis, and Lauer (US 7,490,152 B2; Feb. 10, 2009). Final Act. 7–9.

4. Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Fikouras, Turanyi, Solis, Lauer, and Wood. Final Act. 9–10.

Issues on Appeal

1. Did the Examiner err in finding the combination of Fikouras, Turanyi, and Solis teaches or suggests “a first endpoint node’s identifier is a nonce,” as recited in claim 7?

2. Did the Examiner err in finding the combination of Fikouras, Turanyi, and Solis teaches or suggests the transmission of “a lifetime for the first endpoint node’s identifier,” as recited in claim 8?

3. Did the Examiner err in finding the combination of Fikouras, Turanyi, Solis, and Lauer teaches or suggests “the first endpoint node associates the second endpoint node’s identifier with a specified lifetime for the second endpoint node's identifier,” as recited in claim 10?

ANALYSIS²

Claim 7

Appellants assert the Examiner erred in finding Solis teaches or suggests the selection of a nonce by an endpoint node for use as an identifier of the endpoint node. App. Br. 9. In particular, Appellants argue the nonce-generating entity in Solis is not an endpoint node, but rather a law-

² Throughout this Decision, we have considered the Appeal Brief, filed July 27, 2015 (“App. Br.”); the Reply Brief, filed February 1, 2016 (“Reply Br.”); the Examiner’s Answer, mailed on December 1, 2015 (“Ans.”); and the Final Office Action (“Final Act.”), mailed on February 13, 2015, from which this Appeal is taken.

enforcement agency requesting the intercept of communications between two nodes. Reply Br. 3.

Non-obviousness cannot be established by attacking references individually where, as here, the ground of unpatentability is based upon the teachings of a combination of references. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). Rather, the test for obviousness is whether the combination of references, taken as a whole, would have suggested the patentee's invention to a person having ordinary skill in the art. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

We are not persuaded of Examiner error because Appellants' arguments are not responsive to the Examiner's rejection and attack the references separately, whereas the Examiner's rejection relies on the combined teachings of Fikouras, Turanyi, and Solis. Specifically, the Examiner finds, and we agree, Fikouras teaches an identifier (i.e., the connection identifier) that is adapted for a second endpoint to use to identify an upper-layer session. Ans. 3 (citing Fikouras ¶¶ 23–24); Final Act. 4. The Examiner explains, however, that Fikouras is not explicit that the connection identifier is a first endpoint node's identifier and, therefore, relies on Turanyi as teaching the first endpoint node having a first endpoint node's identifier used to identify a session. Ans. 3 (citing Turanyi ¶¶ 33, 37); Final Act. 4. In particular, the Examiner finds, and we agree, Turanyi's Network Access Identifier (NAI) corresponds to the claimed first endpoint node's identifier. Final Act. 4. Further, the Examiner finds Turanyi teaches identifiers other than the NAI can be used. Ans. 3 (citing Turanyi ¶ 37); Final Act. 4. The Examiner finds, and we agree, Solis teaches the use of a nonce in a communication session. Ans. 3–4 (citing Solis, col. 4, ll. 36–50). Thus, we

agree with the Examiner that the combined teachings of Fikouras, Turanyi, and Solis teach or suggest the disputed limitations of claim 7.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner's rejection of claim 7.

Claims 8 and 9

Claim 8 recites, in part, "the first endpoint node transmits, to the second endpoint node, a lifetime for the first endpoint node's identifier." Appellants concede Solis teaches a nonce lifetime, but assert because Solis does not disclose using the nonce as an endpoint node identifier, Solis fails to teach transmitting a lifetime of an identifier. App. Br. 12; Reply Br. 4–5.

Similar to claim 7, the Examiner's rejection of claim 8 relies on the combined teachings of Fikouras, Turanyi, and Solis. *See* Final Act. 5–6. Appellants' arguments are unpersuasive of Examiner error because they are not responsive to the rejection as articulated by the Examiner. We agree with the Examiner's findings and reasoning as set forth in the Final Office Action (Final Act. 5–6) and Answer (Ans. 5–6) and adopt them as our own.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner's rejection of claim 8. For similar reasons, we also sustain the Examiner's rejection of claim 9, which depends therefrom and was not argued separately. *See* App. Br. 13.

Claims 10 and 11

Appellants advance similar arguments that, because Solis teaches nonce lifetimes and not a lifetime of an endpoint node identifier, the Examiner's rejection is in error. App. Br. 13–14; Reply Br. 5. Additionally,

Appellants assert Solis fails to teach “an identifier associated with a lower-layer address for an endpoint node different from the endpoint node that associates the identifier with a specified lifetime.” App. Br. 14.

Appellants’ arguments are unpersuasive of Examiner error because they are not responsive to the Examiner’s rejection, which relies on the combined teachings of Fikouras, Turanyi, Solis, and Lauer. *See* Final Act. 7–9; *see also Keller*, 642 F.2d at 426. In particular, as the Examiner explains, Turanyi is relied upon for teaching the first endpoint node associating the second endpoint node’s identifier with a current lower-layer address of the second endpoint node. Ans. 6 (citing Turanyi ¶¶ 38–43, 46, 47). The Examiner further finds, and we agree, Fikouras teaches each endpoint maintaining an association for the corresponding endpoint’s identifiers and Solis teaches using a nonce as a type of identifier and transmitting a lifetime for the identifier (i.e., nonce) from one endpoint to its communication partner (i.e., another endpoint). Ans. 6–7 (citing Fikouras ¶¶ 47, 51, 61; Solis, col. 4, ll. 36–50, col. 8, ll. 47–60, col. 10, ll. 24–39). Thus, we agree with the Examiner that the combined teachings of Fikouras, Turanyi, Solis, and Lauer teach or suggest the disputed limitations of claim 10.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner’s rejection of claim 10. For similar reasons, we also sustain the Examiner’s rejection of claim 11, which depends therefrom and was not argued separately.

DECISION

We affirm the Examiner’s decision to reject claims 7–11.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED